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09/965,973	09/28/2001	Mark A. Freeman		5182

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Mark A. Freeman
8928 Twilight
Lenexa, KS 66219

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,973

Applicant(s)

FREEMAN ET AL.

Examiner

Robin A. Hylton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 05 May 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the vent means must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The corrected or substitute drawings were received on May 5, 2003. These drawings are disapproved

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on May 5, 2003 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(f) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the spout having the configuration depicted.

Specification

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested the feature of the channel be included in the title.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "said fluid entrance and said fluid exit are substantially radially aligned" and "said outlet passage is at least one single loop helix".

Claim Rejections - 35 USC § 112

6. Claims 23,30, and 37 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no description provided for the structure of the vent means or its location on the closure (page 3, paragraph 1).

7. Claims 23,30, and 37 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no description provided for the structure of the vent means or its location on the closure (page 3, paragraph 1).

8. Claims 22,29, and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for "said outlet passage extending through said spout". This is a new matter rejection.

9. Claims 23,30, and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As a result of using "vent means", claims 3, 10, and 17 fail to meet the 3-prong analysis of a "means plus function" claim set forth in the "Supplemental Examination Guidelines" effective June 21, 2000 and published in the Official Gazette on July 25, 2000. If applicant desires to invoke 35 USC 112, 6th paragraph, applicant must either modify the claim to include

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the phrase "means for" or show that even though the phrase "means for" is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 USC 112, 6th paragraph. Wherein applicant has clearly not amended the claims nor provided sufficient support for invoking 112, 6th paragraph, the claims are considered to be drawn to any vent means and 112, 6th paragraph of equivalence is not invoked.

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 21,23-28,30-35,37-40 rejected under 35 U.S.C. 103(a) as being unpatentable over Adado (US 5,253,780) in view of Levy et al. (US 4,442,948).

Adado teaches the claimed apparatus except for a recessed channel for fluid flow.

Levy teaches it is known to provide a recessed channel in an inner surface of a container for fluid flow between two surfaces.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the teaching of a recessed channel on an inner surface of a container wall to allow fluid flow between the container wall and the closure in place of the opening in the lid. Doing so provides a more leak-proof arrangement.

12. Claims 22,29, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 21,28, and 35, respectively, above, and further in view of Snider (US 5,147,066).

Adado as modified teaches the claimed apparatus except for a spout.

Snider teaches it is known to provide a stopper lid with a drinking spout.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of a spout to the modified apparatus of Adado. Doing so provides a mouthpiece and a more user-friendly drinking apparatus for small children.

Regarding claims 21 and 23-27, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the recessed channel on the closure outer wall, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

Regarding claims 35 and 37-40, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a recessed channel on both the closure and the container, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regarding, claims 27,34, and 40, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the outlet passage with a volume greater than 0.060 cubic inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Response to Amendment

13. Applicant's amendment filed May 5, 2003 has been entered in part. The proposed amendments to pages 2-4 of the specification have not been entered since the amendment does not conform to 37 CFR1.121(a). Applicant should resubmit the desired changes to the specification in proper format in response to this Office action.

Response to Arguments

14. Applicant's arguments filed May 5, 2003 have been fully considered but they are not persuasive. Applicant's remarks regarding the rejections under 35 USC 112, 1st and 2nd paragraphs are not persuasive, since the examining procedures regarding 112, sixth paragraph

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have changed as noted in the Office action and it is obvious not any type of known vent means can be used on the lid of the instant invention.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art flow controllers are cited for their disclosures.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

17. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely

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asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-____ on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
July 23, 2003


Robin A. Hylton
Primary Examiner
GAU 3727